

### House Favors Clean Air Anti-Smut Legislation Hikes Fines to \$500,000

by Brooks Boliek - The Hollywood Reporter

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WASHINGTON \_ The U.S. House of Representatives overwhelmingly approved legislation Thursday that directs the FCC to fine broadcasters and individuals as much as \$500,000 for airing smutty programming on TV and radio.

The vote was 391-22, with one lawmaker voting "present." Similar legislation is pending in the Senate.

"We want to send a message, whether it's a shock jock or DJ or the person with the finger on the button," said Rep. Fred Upton, R-Mich., the legislation's chief author. "This stuff has got to stop."

The bill would raise the maximum fine for a broadcast license holder from \$27,500 to \$500,000. The fine for a performer would jump from \$11,000 to \$500,000, and the FCC regulation that requires an individual to receive a warning first would be repealed. While the commission has had the authority to fine a nonlicensee for years, it has never done so in an indecency case.

It also includes provisions that automatically designate a broadcaster's license for a revocation hearing if the broadcaster is found guilty of three indecency complaints.

While the bill won overwhelming passage, it was not without its detractors.

Rep. Gary Akerman, D-N.Y., called the legislation a blatant attempt to silence critics of the government.

"To impose a fine on speech you don't like, it doesn't have a chilling effect, it's a freezing effect. It freezes people out," he said. "The test of freedom of speech is if you tolerate ugly speech. These (fines) become weapons of mass communication, and no one will own them but the White House and their Big Media friends."

The Bush administration strongly endorsed the bill in a memo to lawmakers Thursday.

Akerman and other lawmakers accused Clear Channel Communications of yanking popular

radio shock jock Howard Stern because he criticized President Bush.

"He spoke out against the president," Akerman said. "Now he's paying the price."

Clear Channel executive vp Andrew Levin dismissed those accusations.

"It's amazing to me how these conspiracy theories get invented and take on a life of their own," he said. "It's absurd. What we did with Howard's show, we did because he broadcast sexually explicit language that has no place on the airwaves."

Upton defended his legislation, saying the critics are wrong.

"This doesn't change the standards," he said. "This is the public airwaves. You can't tell me this stuff should be on the air."

As defined by the FCC, material is indecent if it "in context, depicts or describes sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards for the broadcast medium."

Obscene speech is not protected by the First Amendment and cannot be broadcast at any time, but indecent speech can safely be aired between 10 p.m. and 6 a.m. because the courts and the FCC have determined that children are not a big part of the audience.

While the House leadership allowed Rep. Janice **Schakowsky**, D-Ill., the ability to offer an amendment stripping the language that puts individuals at risk of the \$500,000 fine, she chose not to.

"You can see the numbers," she said. "I'm going to work to get a stand-alone bill. We need to build a coalition, get more people involved. It might also help if we get a little distance between Janet Jackson's breast so we can get people to see it's a First Amendment issue."

Upton said the amendment had no chance.

"It reminded me of 'The Sound of Music,' " he said. "The amendment was going to the graveyard one way or the other."

The Senate Commerce Committee on Wednesday approved its own version of the bill. If it is approved by the Senate, the differences will have to be ironed out in a conference committee.

Upton said the biggest problem with the Senate legislation is an amendment adopted by the committee that suspends for one year the FCC's new media ownership rules while the General Accounting Office determines whether increasingly consolidated media industry leads to raunchier broadcasts.

"That's the one big sticking point," Upton said. "They have it, and we don't."

While pressure has been building on lawmakers to take action to clean up the airwaves, it picked up momentum after the now-infamous Feb. 1 Super Bowl halftime show during which Justin Timberlake exposed Jackson's breast to 90 million viewers.